IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sushil Kumar v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.3849/2000
under Article 226 of the Constitution of India.

Date of Order : 25th May, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.
Mr. Jitendra Chopra, for the respondent No.5.

BY THE COURT :

A license was granted by the licensing authority to the petitioner on 16.10.1997 to carry on business of purchase, sale and store for sale the petroleum product viz. High speed diesel oil at Suraj Oil Centre, Randhisar. The license granted was to remain in currency upto 31.3.2017.

The District Supply Officer, Churu by an order dated 12.7.2000 directed the petitioner to stop distribution of diesel with immediate effect and then to report to his office.

The petitioner being aggrieved by order dated 12.7.2000 preferred an appeal under clause (20) of the Rajasthan Petroleum Products (Licensing and Control)

Order, 1990 (hereinafter referred to as “the Order of 1990”). The petitioner contended before the appellate authority that he was distributing High speed diesel in pursuance of the license granted to him by the competent authority on 16.10.1997, therefore, there was no just and valid reason to direct him to stop distribution of High speed diesel. The appeal preferred by the petitioner was rejected by the appellate authority by an order dated 31.8.2000 on the count that no permission could be granted to the petitioner for distribution of High speed diesel in view of proviso to sub-clause (5) of clause 3 of the Order of 1990. The petitioner challenged validity of order passed by the appellate authority dated 31.8.2000 by way of filing a revision petition before the Commissioner Food and Supply, Jaipur. The same too was rejected by the Additional Commissioner (Food), Jaipur by order dated 23.9.2000. Hence this writ petition is preferred by the petitioner giving challenge to the order passed by the District Supply Officer, Churu dated 12.7.2000, the order passed by the appellate authority i.e. the Collector, Churu dated 31.8.2000 and the order passed by the Additional Commissioner (Food) and Civil Supply, Jaipur dated 23.9.2000.

The contention of the petitioner is that the proviso to sub-clause(5) of clause 3 of the Order of 1990 is having no application in present controversy

as he was distributing High speed oil in pursuance of the license dated 16.10.1997 granted prior to establishment of petrol pump by Indian Oil Corporation (respondent No.5).

A reply to the writ petition has been filed on behalf of the respondents stating therein that according to proviso to sub-clause(5) of clause 3 of the Order of 1990 no license could have been granted in favour of the petitioner for distribution of High speed diesel as a petrol pump was established by the Indian Oil Corporation wherefrom the barrel point of the petitioner is within a radius of 10 kms. The petrol pump was installed by the Indian Oil Corporation on 5.7.2000.

I have heard counsel for the parties.

As stated above, a license was granted to the petitioner on 16.10.1997 by the licensing authority under the Order of 1990 to carry on business of purchase, sale and store for sale the petroleum product viz. High speed diesel oil. The petitioner was to operate his business in village Randhisar, Ratangarh-Chhapar Road in District Churu. After granting license to the petitioner a petrol pump was established by Indian Oil Corporation on 5.7.2000 within radius of 10 kms. of which the petitioner was also operating his business. Proviso to sub-clause(5)

of clause 3 of the Order of 1990 provides that where no authorised retail out-let dealer for High speed diesel exists in rural areas the barrel point dealer can sale High speed diesel in accordance with the directions issued by government or District Collector from time to time. Sub-clause(5) of clause 3 of the Order of 1990 reads as under:-

> "(5)In the rural areas where no authorised retail out-let dealer for High Speed Diesel exists, the barrel point dealers can sell the High speed Diesel in such areas under such directions which may be issued by the Government or District Collector from time to time:
>
> Provided that no licence shall be issued to carry on business as a Barrel Point Dealer within a radius of 10 K.M. Of any regular Diesel retail out let of any Oil company."

According to sub-clause(5) of clause 3 of the Order of 1990 no license could be issued to carry on business as a barrel point dealer within a radius of 10 kms. of any regular diesel retail out let of any oil company.

In the instant matter the license was granted to the petitioner on 16.10.1997 to sale High speed dealer in village Randhisar at Ratangarh-Chapar Road. At the time of granting license to the petitioner no retail out let dealer for High speed diesel was

existing. Respondent Indian Oil Corporation installed its petrol pump in the month of July, 2000 i.e. quite later to the grant of license to the petitioner for sale of High speed diesel. Proviso to sub-clause(5) of clause 3 of the Order of 1990 provides that no license shall be issued if any retail out let dealer of High speed diesel exists. Meaning thereby no retail out let dealer should exist within a radius of 10 kms. to that point while granting license for sale of High speed diesel in rural areas, as such if an outlet for retail sale already exist then no license is required to be granted within a radius of 10 kms.

In the present case when the license was granted to the petitioner no retail out let dealer was operating within a radius of 10 kms. In view of it the license was rightly granted to the petitioner. The respondents on establishment of petrol pump by Indian Oil Corporation estopped the petitioner from operating his business in pursuance to the proviso to sub-clause (5) of clause 3 of the Order of 1990 erroneously as the petitioner was operating his business prior to establishment of petrol pump. In fact proviso to sub-clause(5) of clause 3 of the Order of 1990 is having no application in present controversy. The appellate authority i.e. the Collector, Churu and the Additional Commissioner (Food and Supply) failed to appreciate this position of law and, therefore, wrongly affirmed the order passed by the District Supply Officer dated

12.7.2000. The orders passed by the above authorities, therefore, suffer from an illegality which is apparent on the fact of record.

In view of whatever discussed above, this writ petition is allowed. The order passed by the District Supply Officer dated 12.7.2000 and the orders passed by the Collector, Churu dated 31.8.2000 and by the Additional Commissioner (Food and Supply) dated 23.9.2000 are also hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.